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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY MXW DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE MAXWELL TECHNOLOGIES
INC., SECURITIES LITIGATION

Case No.: 3:13-cv-00580-BEN-RBB

**ORDER APPROVING
DISTRIBUTION OF SETTLEMENT
FUND**

On November 3, 2014, the Court entered an Order Preliminarily Approving Settlement, Certifying Settlement Class and Providing for Notice of Settlement, and set a deadline for Class Members to submit claims to participate in a distribution from the Net Settlement Fund by February 22, 2015.¹ (Docket No. 77.)

On February 16, 2015, the Court entered an Order and Final Judgment of Dismissal with Prejudice, which, *inter alia*, approved the Plan of Allocation of Settlement proceeds, directed the parties to consummate the Settlement in accordance

¹ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Stipulation.

1 with the terms of the Stipulation, and retained jurisdiction over the litigation for all
2 matters relating to the consummation of the Settlement. (Docket No. 84.)

3 On September 2, 2016, Lead Plaintiff filed a Motion for Approval of Distribution
4 of Settlement Fund, indicating that the Claims Administrator has completed the
5 administration of the Settlement Fund, including the processing and reviewing of all
6 submitted Proofs of Claim and recommending the eligibility of each submitted claim, and
7 is prepared to distribute the proceeds of the Settlement. (Docket No. 87.)

8 Having reviewed Lead Plaintiff's Motion for Approval of Distribution of
9 Settlement Fund and corresponding memorandum of points and authorities, the
10 Declaration of Ryan Kao in Support Motion for Approval of Distribution of Settlement
11 Fund ("Kao Declaration"), and all other exhibits and papers submitted in support thereof,
12 the Court has determined that good cause exists for the relief requested. The Court
13 hereby enters this Order Approving Distribution of Settlement Fund.

14 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND
15 DECREED that:

16 1. This Order incorporates by reference the definitions in the Stipulation of
17 Settlement dated October 6, 2014 ("Stipulation") and in the Kao Declaration and all
18 capitalized terms used herein shall have the same meanings as set forth in the Stipulation
19 or in the Kao Declaration.

20 2. This Court has jurisdiction over the subject matter of the Litigation and over
21 all parties to the Litigation, including all Class Members.

22 3. The claims set forth in Exhibits B-1 ("Timely Eligible Claims") and B-2
23 ("Late But Otherwise Eligible Claims") to the Kao Declaration are **APPROVED**, and the
24 distribution of the Net Settlement Fund to the Authorized Claimants is **AUTHORIZED**.

25 4. Wholly ineligible or otherwise deficient claims, as set forth in Exhibit B-3 to
26 the Kao Declaration, are **REJECTED**.

27 5. Epiq Class Action & Claims Solutions, Inc. ("Epiq") is to conduct an initial
28 distribution ("Initial Distribution"), after deducting \$112,916.52 in remaining fees to

1 itself, and after payment of any estimated taxes, the costs of preparing appropriate tax
2 returns, and any escrow fees as follows:

3 a. Epiq shall calculate award amounts to all Authorized Claimants by
4 calculating their pro rata share of the fund in accordance with the Plan of
5 Allocation;

6 b. Pursuant to the terms of the Plan of Allocation, Epiq shall eliminate
7 any Authorized Claimant whose award amount calculates to less than
8 \$10.00. Such Authorized Claimants shall not receive any distribution from
9 the Net Settlement Fund and Epiq shall send letters to those Authorized
10 Claimants advising them of that fact;

11 c. After eliminating Authorized Claimants who would have received less
12 than \$10.00, Epiq will calculate the pro rata distribution payments for
13 Authorized Claimants who would have received \$10.00 or more pursuant to
14 the calculations (“Distribution Amounts”);

15 d. Epiq shall then prepare checks for the distribution and registers of
16 such distributions, and send the payments by prepaid first class mail, after
17 the list of Authorized Claimants is compared to Epiq’s internal list of
18 claimants who have been identified as potentially fraudulent filers. Finally,
19 Epiq will issue replacement payments for distributions upon request by
20 payee, and will respond to inquiries about distribution amounts and
21 Recognized Loss Amount calculations;

22 e. All Initial Distribution checks shall bear the following notation:
23 “DEPOSIT PROMPTLY, VOID AND SUBJECT TO RE-DISTRIBUTION
24 IF NOT NEGOTIATED WITHIN 90 DAYS OF DISTRIBUTION”;

25 f. Authorized Claimants who do not negotiate their Initial Distribution
26 checks in accordance with the Plan of Allocation shall irrevocably forfeit all
27 recovery from the Settlement. The funds allocated to all such stale-dated
28 checks will be available to be re-distributed to other Authorized Claimants in

1 the Second Distribution described below. Similarly, Authorized Claimants
2 who do not negotiate subsequent distributions within the time allotted or on
3 the conditions set forth in the Plan of Allocation will irrevocably forfeit any
4 further recovery from the Net Settlement Fund; and

5 g. After Epiq has made reasonable and diligent efforts to have
6 Authorized Claimants negotiate their Initial Distribution checks, which
7 efforts shall consist of the follow-up efforts described in the Kao
8 Declaration, but no earlier than six (6) months after the Initial Distribution,
9 Epiq will conduct a second distribution of the Net Settlement Fund (the
10 "Second Distribution"), pursuant to which any amounts remaining in the Net
11 Settlement Fund after the Initial Distribution, after deducting Epiq's fees and
12 expenses incurred in connection with administering the Settlement for which
13 it has not yet been paid (including the estimated costs of such Second
14 Distribution), and after the payment of any estimated taxes, the costs of
15 preparing appropriate tax returns, and any escrow fees, will be distributed to
16 all Authorized Claimants in the Initial Distribution who (1) cashed their
17 distribution payment and (2) are entitled to at least \$10.00 from the re-
18 distribution based on their pro rata share of the remaining funds.

19 6. In order to allow a final distribution of any balance that may remain in the
20 Settlement Fund after the distribution, whether by reason of returned funds, tax refunds,
21 interest, uncashed drafts, or otherwise, the following plan is ordered:

22 a. If cost effective, not less than six (6) months after the Second
23 Distribution is conducted, Epiq will conduct a further distribution of the Net
24 Settlement Fund, pursuant to which all funds remaining in the Net
25 Settlement Fund, after deducting Epiq's unpaid fees and expenses incurred
26 or to be incurred in connection with administering the Net Settlement Fund
27 (including the estimated costs of such distribution), and after the payment of
28 any estimated taxes, the costs of preparing appropriate tax returns, and any

1 escrow fees, will be distributed to Authorized Claimants who cashed their
2 Second Distribution checks and who would receive at least \$10.00 in such
3 further distribution. Additional re-distributions, after deduction of costs and
4 expenses as described above and subject to the same conditions, may occur
5 thereafter in six-month intervals until Lead Plaintiff's Counsel, in
6 consultation with Epiq, determine that further re-distribution is not cost-
7 effective; and

8 b. Pursuant to paragraph 5.5 of the Stipulation, at such time as Lead
9 Plaintiff's Counsel, in consultation with Epiq, determine that further re-
10 distribution of the funds remaining in the Net Settlement Fund is not cost-
11 effective, the remaining balance of the Net Settlement Fund, after payment
12 of any unpaid fees or expenses incurred in connection with administering the
13 Net Settlement Fund and after the payment of any estimated taxes, the costs
14 of preparing appropriate tax returns, and any escrow fees, shall be
15 contributed to non-sectarian, not-for-profit 501(c)(3) organization(s), to be
16 recommended by Lead Plaintiff's Counsel.

17 7. In order to allow the full and final distribution of the Net Settlement Fund, it
18 is necessary to bar any further claims received after August 15, 2016, from eligibility in
19 the distribution of the Net Settlement Fund beyond the amount allocated to Authorized
20 Claimants.

21 8. The administration of the Settlement and the proposed distribution of the
22 Net Settlement Fund comply with the terms of the Stipulation and the Plan of Allocation
23 and, therefore, all persons involved in the review, verification, calculation, tabulation, or
24 any other aspect of the processing of the claims submitted herein, or otherwise involved
25 in the administration or taxation of the Settlement Fund or the Net Settlement Fund, are
26 released and discharged from any and all claims arising out of such involvement, and all
27 Class Members, whether or not they have claimed against, they received, or they are to
28 receive payment from the Net Settlement Fund, are barred from making any further

1 claims against the Net Settlement Fund or Lead Plaintiff, Counsel for Lead Plaintiff, the
2 Claims Administrator, the escrow agent or any other agent retained by Lead Plaintiff or
3 Lead Plaintiff's Counsel, are bound by all of the terms of the Stipulation, including the
4 terms of the Final Judgment, and will be barred from bringing any action against the
5 Released Parties concerning the Released Claims or in connection with the administration
6 of the Settlement, or to claim against the Net Settlement Fund for any amount greater
7 than that allocated to such Class Member as a result of its submission of a valid proof of
8 claim.

9 9. Epiq shall be paid the outstanding balance of its fees and expenses in
10 connection with the services performed and to be performed in administering the Proofs
11 of Claim and distributing the Net Settlement Fund in the total amount of \$112,916.52.

12 10. Epiq is authorized to destroy the paper copies of the Proof of Claim forms
13 one (1) year after the distribution of the Net Settlement Fund, and to destroy electronic
14 copies of claim records three (3) years after the distribution of the Net Settlement Fund.

15 11. This Court retains jurisdiction to consider any further applications
16 concerning the administration of the Settlement, and such other and further relief as this
17 Court deems appropriate.

18 **IT IS SO ORDERED.**

19
20 DATED: May 5, 2017


HON. ROGER T. BENITEZ
United States District Court Judge